



January 8, 2016

Via ECF

Honorable Judge Charles R. Breyer
U.S. District Courthouse, Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

***Subject: In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and
Products Liability Litigation MDL No. 2672 CRB (JSC)***

**Application of Jordan L. Lurie, On Behalf of Plaintiff Paul Karcsay
and
Capstone Law APC, in Response to Pretrial Order No. 2**

Dear Judge Breyer:

Pursuant to Pretrial Order No. 2 [Dkt. No. 336], Jordan L. Lurie, on behalf of Plaintiff Paul Karcsay and Capstone Law APC, seeks to be appointed to the Plaintiffs’ Steering Committee or, alternatively, to be appointed as Plaintiffs’ Coordinating Counsel. While the Court did not specifically identify the position of Plaintiffs’ Coordinating Counsel or solicit applications for it, the role of Plaintiffs’ Coordinating Counsel, if properly performed, would greatly assist the parties and the Court without usurping or duplicating the specific roles of the Court, the Magistrate Judge or Lead Counsel.

Plaintiffs’ Coordinating Counsel

This litigation has an unusual number of moving parts, and it is critical that the various participants have a way to communicate with each other in order for this litigation to be resolved. The role of Plaintiffs’ Coordinating Counsel would be to facilitate communication between and among all of the various entities, including counsel in the federal case and over 100 pending state court cases; cases pending in Germany; the federal and state agencies; the Department of Justice; and the claims administrator already selected by VW. In effect, Plaintiffs’ Coordinating Counsel would be the liaison or single point of contact for all of the participants to exchange whatever information they believe is necessary to move this entire litigation to resolution. Plaintiffs’ Coordinating Counsel could then report to the Court as necessary, or as requested.



With respect to the non-MDL consumer cases, Plaintiffs' Coordinating Counsel would assist in coordinating the flow of information between the federal and state consumer actions (for example, communicating important orders in the MDL that may be relevant to the related actions and monitoring and reporting to the Court regarding major developments in non-MDL cases) and between the consumer and securities actions. Plaintiffs' Coordinating Counsel would also coordinate discovery between Lead Counsel and all non-MDL actions and facilitate the informal joint management or prosecution of the cases.

Plaintiffs' Coordinating Counsel could also serve an important function in facilitating settlement. Plaintiffs' Coordinating Counsel would assist all of the participants in jointly identifying the factual issues that might be prerequisites to mediation or that might need to be adjudicated by the Court, even before a formal mediation takes place. For instance, it may well be that the DOJ's recently filed civil lawsuit against VW provides an additional opportunity for a global resolution. Plaintiffs' Coordinating Counsel would help coordinate communication between all parties to achieve that result.

Capstone Law and its senior litigator, Jordan Lurie, are uniquely qualified for the role of Plaintiffs' Coordinating Counsel. First, Jordan Lurie and his team at Capstone have developed a niche in prosecuting and resolving class cases involving vehicle manufacturers' failures to disclose. In the past three years, attorneys at Capstone have prosecuted over 25 cases against the major car manufacturers. *See* Capstone's abbreviated Firm resume (attached). Capstone has forced two vehicle recalls, and prevailed on a motion against Ford Motor Co. for catalyst fees before Judge Tigar based on a vehicle recall. Mr. Lurie's team at Capstone specializes in consumer class actions and has litigated dozens of consumer class cases, including, but not limited to causes of action for consumer fraud, failure to disclose, misrepresentations, mislabeling, FCRA, and warranty laws.

Second, Mr. Lurie has excellent working relationship with VW's defense counsel, Herzfeld & Rubin, having litigated and settled three class cases where Herzfeld & Rubin represented defendant: *Asghari, et al. v. Volkswagen AG, et al.*, No. 2:13-cv-02529 (C.D. Cal.) (excessive oil consumption, before Judge Margaret Morrow); *Sadowska v. Volkswagen of America, Inc.*, No. 2:11-cv-0665 (Continuously Variable Transmissions, before Judge Beverly Reid O'Connell) and *Glasser v. Volkswagen of America, Inc.*, No. 06-2562 (litigation involving SmartKeys, before Judge Audrey Collins).

Third, Capstone's offices are conveniently located across the street from Herzfeld & Rubin's Los Angeles office, which is its only office in California. This proximity



will allow for quick and easy access and personal interaction with defense counsel, as necessary.

Finally, Capstone has demonstrated its perseverance and creativity in resolving seemingly intractable cases. This Court may be familiar with *Klee v. Nissan*, No. 2:12-cv-08238-AWT, a class action in which then Chief Judge of the Ninth Circuit, Alex Kozinski, and his wife objected to the settlement. As a result, three district court judges recused themselves from handling the matter, and the case finally had to be assigned to Circuit Judge A. Wallace Tashima, sitting by designation as a district court judge. Through the perspicacity of Plaintiffs' counsel, and with the able assistance of Hon. Edward J. Infante and cooperation by defendant's counsel, the case ultimately was resolved. Plaintiffs' Counsel successfully persuaded Judge Kozinski to withdraw his objection, and the settlement was finally approved.

Jordan Lurie also has extensive experience in prosecuting securities fraud class actions, which is a benefit in coordinating with the attorneys who are prosecuting and defending the related securities class action against VW. Prior to joining Capstone, Jordan was lead or co-lead counsel in securities fraud class actions which resulted in settlements in excess of \$100 million and was a trial counsel in a securities class action tried to verdict before your Honor, *Howard v. Everex Systems, Inc.*, No. 3:92-CV-03742 (N.D. Cal. 2002).

Judge Infante and Judge John Shepard Wiley, Jr. (Central Civil West Courthouse, Los Angeles), among others, can vouch for Jordan Lurie's resourcefulness and abilities.

Plaintiffs' Steering Committee

For all of the foregoing reasons, Jordan Lurie, on behalf of Capstone, also seeks in the alternative, to be appointed to the Plaintiffs' Steering Committee. Capstone's application is supported by Berger & Montague; Baron & Budd; Boies Schiller; Harke, Clasby & Bushman; and Robbins Geller. The Committee would benefit from Capstone's experience, and there should be room on the Committee for a firm with a proven record in complex car cases, even if that firm has not previously been in a leadership position in a MDL. As a member of the Steering Committee, Capstone would be sensitive to the attorneys' fee issue and to keeping attorneys' fees in check. Capstone is able to work cooperatively with other plaintiffs' counsel and with defense counsel and is willing and able to commit the resources necessary to prosecute this action in a timely and efficient manner.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "J. Lurie", written over the "Respectfully Submitted," text.

Capstone Law APC
Encl.



FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only consumer and labor law firms. With twenty-seven seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex consumer and employment actions. Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining tens of millions of dollars in recovery for consumers and employees. A full description of the firm's attorney's accomplishments and significant settlements can be found on Capstone's website, Capstonelawyers.com.

CAR CASES

Capstone is a leader in prosecuting class cases involving vehicle manufacturers' failures to disclose. The firm's car cases include: ***Aguilar v. General Motors***, 1:13-CV-00437 LJO GSA (E.D. Cal.) (class action regarding defective steering pumps in Buick Enclave and GMC Acadia vehicles. Following Plaintiffs' lawsuit, General Motors issued an extended warranty on the defective steering pump at issue and provided compensation to the vehicle owners); ***Asghari v. Volkswagen AG, et al.***, 2:13-cv-02529 (C.D. Cal.) (achieved nationwide class settlement providing free service adjustments to all class members, as well as reimbursements to class members who paid for service adjustments to correct excessive oil consumption); ***Belle v. Chrysler***, 8:12-cv-00936 (C.D. Cal.) (class action regarding premature wear to brake rotors and pads in Dodge Journey and Chrysler Town & Country vehicles.); ***Bourne-Miller v. BMW***, 2:12-cv-09824 (C.D. Cal.) (achieved nationwide class action settlement providing extended warranty, reimbursement for transmission replacements, and compensation for sale at a loss due to transmission problems); ***Coba v. Ford***, 2:12-cv-01622 (D. N.J.) (class action regarding Ford E and F-Series trucks with delaminating fuel tanks, costing owners thousands. Plaintiffs' Motion for Class Certification and Ford's Motion for Summary Judgment are currently under submission); ***Cusick v. Ford***, 2:15-cv-08831-AB-FFM (C.D. Cal.) (ongoing class action regarding almost 2 million Ford Focus and Freestyle vehicles with defective Dual Clutch Transmissions.); ***DeCoteau v. FCA***, 2:15-cv-00020-MCE-EFB (E.D. Cal.) (ongoing class action regarding defective Dual Clutch Transmissions in Dodge Dart vehicles. Following Plaintiffs' lawsuit, FCA issued a customer campaign providing the vehicle owners with free repairs to the Transmission Control Module); ***Falco v. Nissan***, 2:13-cv-00686 DDP (MANx)(C.D. Cal.) (ongoing class action regarding defective timing chain systems in Nissan vehicles. The Parties are currently briefing Plaintiffs' Motion for Class Certification.); ***Follari-Johnson v. GM***, 2:14-cv-07924-KM-MAH (D. N.J.) (class action regarding Chevy Volt vehicles with defective Electronic Power Steering Assist, causing the steering wheel to bind in the center position. Following Plaintiffs' lawsuit, General Motors issued a customer campaign to the vehicle owners providing free repairs.); ***Forsley v. Toyota***, BC577240 California Superior Court (class action regarding defective HVAC systems in Toyota Camry vehicles causing noxious odors and mold in cabin); ***Granillo v. FCA***, 5:15-cv-02017-VAP-DTB (C.D. Cal.) (ongoing class action regarding defective 9-Speed Transmissions in Jeep Cherokee and other FCA vehicles.); ***Hardt v. FCA***, 8:14-cv-01375-SJO-VBK (C.D. Cal.) (class action regarding a defect in the Dodge Dart manual transmission causing the clutch pedal to lose pressure and fall to the floor. Following Plaintiffs' lawsuit, General Motors issued a customer campaign to the vehicle owners providing free repairs); ***Hermenegildo v. Honda***, BC 501218 California Superior Court (class action alleging defective Vehicle Stability Control systems causing unintended braking. Following Plaintiffs' lawsuit, Honda issued a recall which corrected the problem); ***Ho v. Toyota***, 12-cv-2672 (N.D. Cal.) (class action regarding Lexus RX vehicles with defective headlamps. Following Plaintiffs' lawsuit, Toyota issued an extended warranty and reimbursement to the vehicle owners); ***Jones v.***



Porsche, 2:15-cv-05766-GW-SS (C.D. Cal.) (ongoing class action regarding veiling glare obscuring the windshield in Porsche Panamera and other vehicles with beige dashboards); **Klee v. Nissan**, 2:12-cv-08238 (C.D. Cal.) (achieved nationwide class settlement providing charge card or cash plus a multi-thousand dollar battery replacement program for class members with premature battery capacity loss, free of charge); **LeSieur v. BMW**, 3:15-cv-06143-EDL (N.D. Cal.) (ongoing class action regarding oil consumption in BMW's twin-turbo N63 engine); **Long v. Graco**, 3:13-cv-01257-JD (N.D. Cal.) (class action regarding defective child restrain buckles in Graco MyRide and other car seats. Following Plaintiffs' lawsuit, Graco issued a nationwide recall of the affected buckles); **MacDonald v. Ford**, 13-CV-02988 (N.D. Cal.) (class action regarding defective Motor Electronic Cooling Systems in 2005-2008 Ford Escape Hybrid vehicles. Following Plaintiffs' lawsuit, Ford issued a recall which corrected the problem. The Court held that Plaintiffs' lawsuit was the catalyst for the recall and that they were entitled to attorneys' fees); **Morishige v. Mazda**, BC 595280 California Superior Court (Freeman)(ongoing class action regarding defective windshields in 2013-2015 Mazda CX-5 Vehicles); **Rasico v. Ford**, 2:12-cv-09026 (C.D. Cal.) (class action regarding defective Continuously Variable Transmissions in Ford Freestyle vehicles.); **Reynante v. Toyota**, BC 426627 California Superior Court (Freeman)(ongoing class action regarding fraudulent fuel economy marketing for the second generation Toyota Prius); **Salas v. Toyota**, 2:15-cv-08629-FMO-E (C.D. Cal.) (ongoing class action regarding defective HVAC systems in Toyota Camry vehicles causing noxious odors and mold in cabin); **Torres v. Nissan**, 2:15-cv-03251-RGK-FFM (C.D. Cal.) (class action regarding defective Continuously Variable Transmissions in Nissan Pathfinder vehicles); **Vargas v. Ford**, 2:12-cv-08388 (C.D. Cal.) (ongoing class action regarding almost 2 million Ford Focus and Freestyle vehicles with defective Dual Clutch Transmissions.); **Valencia v. Volkswagen**, 4:15-cv-00887-KAW (N.D. Cal.) (ongoing class action regarding premature wear to the rotors and brake pads in the Volkswagen Routan minivan.)

BRIEF PROFESSIONAL BIOGRAPHY OF JORDAN L. LURIE

A well respected class action litigator, Jordan Lurie heads the consumer litigation practice group at Capstone, prosecuting cases involving violations of state and federal consumer protection laws, with a particular focus on class actions involving vehicle manufacturers' failures to disclose. Prior to joining Capstone in 2012 to develop the firm's consumer practice, Mr. Lurie spent most of his career at a Weiss & Lurie, a national plaintiffs' law firm specializing in corporate securities and consumer class actions, where he was the managing partner of the firm's Los Angeles office. Over his career, Mr. Lurie has obtained settlements in excess of \$100 million in securities actions where he was lead or co-lead counsel. Notable cases where Jordan served as lead counsel include: *In re: Apria Healthcare Group Secs. Litig.*, (settled on behalf of investors for \$42 million) and *Morganstein v. Aura Systems* (settled on behalf of investors for \$18 million).

Mr. Lurie graduated from the University of Southern California Gould School of Law in 1987, where he was Notes Editor of the University of Southern California Law Review. He received his undergraduate degree with honors from Yale University. When not litigating, Mr. Lurie is an active educator and community leader. Jordan participated in the first Wexner Heritage Foundation leadership program in Los Angeles and holds leadership and executive positions in various organizations in the Los Angeles community. He has also been the featured speaker at California MCLE seminars regarding securities fraud and class actions and has authored several publications for the California Continuing Education of the Bar. Mr. Lurie has been selected as one of Southern California's "Super Lawyers" from 2012 through 2015.